



MAYOR & COUNCIL COMMUNICATION

October 21, 2008

Subject: PUBLIC HEARING - Policy Guidelines and Application
Procedures for the Establishment of Community Facilities
Districts (CFDs) (City-Wide)

Page: 1 of 1

The attached Exhibit A to Resolution No. 21125 (City of Tucson, Arizona Policy Guidelines and Application Procedures for the Establishment of Community Facilities Districts) has been revised and replaces the previous Exhibit A.

Respectfully submitted,

Mike Letcher
Deputy City Manager

ML:CP:tc
OCT21-08-579(2)

Attachment: Exhibit A to Resolution No. 21125 (City of Tucson, Arizona Policy Guidelines and Application Procedures for the Establishment of Community Facilities Districts)

October 21, 2008

**CITY OF TUCSON, ARIZONA
POLICY GUIDELINES AND APPLICATION PROCEDURES
FOR THE ESTABLISHMENT OF
COMMUNITY FACILITIES DISTRICTS**

In order to secure for the City of Tucson, Arizona (the "City") the public benefits of the Community Facilities Act (the "Act") and protect the interests of its citizens the following Policy Guidelines and Application Procedures have been adopted by the City of Tucson Mayor and Council.

Community facilities districts (the "CFD") provide a mechanism for financing public infrastructure within the boundaries of the CFD, and to better enable the City to provide municipal services in the district. All terms used herein and not otherwise defined shall have the meaning given to them in the Act.

**ARTICLE 1
General Policies**

- 1.1 Recognizing that a CFD is a statutory special taxing district with borrowing powers created within the boundaries of the City that has perpetual existence, the Mayor and Council believes that the formation of each CFD should be considered carefully in order to ensure its financial viability and lasting success.
- 1.2 CFDs shall be utilized primarily in connection with the financing of public infrastructure for development of master planned communities or substantial commercial development. CFDs may also be used to enhance public infrastructure and services in support of redevelopment projects. Public improvements financed by a CFD shall be in conformance with the City's General Plan.
- 1.3 An "application" for the formation of a CFD must be submitted in accordance with this policy by the owners/developers (herein referred to as "Applicant") of the real property under consideration (the Property) prior to determination that a CFD will be formed.
- 1.4 All costs incurred by the City in connection with the application for and formation of the CFD shall be paid by the Applicant or successor thereto through advance deposits as provided herein. Deposits shall be utilized for payment of services rendered by City staff and outside consultants who may be retained by the City, including but not limited to bond counsel, financial advisors, engineers, appraisers and attorneys. If authorized by the CFD exercising its sole discretion, all or part of such costs may be reimbursed to the Applicant from an ad valorem property tax levy, bond proceeds or other sources of the CFD provided such reimbursement is in conformance with federal law, state law and these guidelines.
- 1.5 The City will encourage an area to be governed by as few CFDs as possible, and a preference will be given to one master CFD. This policy is adopted to provide ease of administration and the largest tax/revenue base possible. The decision to form a CFD shall be a decision of the Mayor and Council exercised in its sole and absolute discretion.
- 1.6 The CFD will be governed by a Board of Directors (the "Board") comprised of the legislative body of the City (the members of the City Council and the Mayor), ex

- officio. The day-to-day administrative responsibilities of the CFD will be performed by the City staff pursuant to a development agreement as described in Section 3.5.d. herein, or by outside personnel at City's discretion including but not limited to special tax consultant, bond counsel, underwriter, appraiser, engineer, and other consultants deemed necessary by the City. At the option of the Board, advisory committees may be utilized.
- 1.7 Unless otherwise agreed to by the Mayor and Council, the CFD must be self-supporting from the standpoint of financing, operations and maintenance. If authorized by the Board, all or part of such costs may be reimbursed from an ad valorem property tax levy or other sources of the CFD.
 - 1.8 The Board will determine, in its sole and absolute discretion, the amount, timing and form of financing to be used by a CFD after review of the project feasibility report and other required pertinent information.
 - 1.9 All public infrastructure acquired by a CFD will utilize public procurement procedures in accordance with applicable laws, rules and regulations of the State and the City.
 - 1.10 The CFD will not use bond proceeds or other CFD funds to purchase public rights-of-way or other real property to be used for public infrastructure improvements, if such real property would be required to be dedicated and conveyed to the City by the Applicant upon development of the Property.
 - 1.11 Any debt issued by a CFD may not have any substantial direct or indirect negative impacts on the debt, financing capabilities or bond ratings of the City.
 - 1.12 Projects that recognize and promote "green" building standards and sustainable building practices will be given a preference.
 - 1.13 Projects that recognize and promote affordable housing opportunities will be given a preference.
 - 1.14 The City, in its sole and absolute discretion, will determine the consultants to be utilized by the City and the CFD with respect to formation and subsequent financing related to any CFD, including but not limited to attorneys, underwriters, financial advisors, appraisers, assessment engineers and other consultants as deemed necessary by the City and the CFD.
 - 1.15 Notwithstanding the foregoing, these Policy Guidelines and Application Procedures may be modified from time to time by the City and the City withholds the right to amend these guidelines and procedures on a case by case basis.

ARTICLE 2

Content of Applications

The Application shall, at a minimum, contain the following information and be organized in the manner described below.

2.1 Overview

- a. Description and Purpose. A general description of the proposed CFD, its purpose, anticipated private and public infrastructure, cost and timeline. This description shall include a statement of how the proposed CFD meets the existing development objectives of the City, including the degree to which the CFD is consistent with the goals of the City's General Plan for promoting orderly development and is consistent with growth management policies and zoning requirements. In addition, the description should include components, if any, that recognize and promote “green” building standards and sustainable building practices, and components, if any, that recognize and promote affordable housing opportunities.
- b. Location. A description of the proposed CFD’s general location within the City; an area site map illustrating the proposed boundaries and a legal description of the proposed boundaries. This description must include an analysis of the appropriateness of the CFD boundaries.
- c. Ownership Interests. The identity and address of all persons or entities with any interest in the property including lien holders and purchasers under pending sales contracts and the names and addresses of any qualified electors located within the proposed boundaries of the CFD. A certificate from the Pima County Assessor or, if not accurate, a current title report and certificate from the Pima County Elections Department shall be submitted as evidence of names or persons with any interest in the land and qualified electors, respectively.
- d. Status of Entitlements and Source of Water, Sewer Treatment, Parks and Recreation Facilities, and Other Utilities/Services. The status of all entitlements with respect to the Property as well as the plan for providing water, sewer treatment, Parks and Recreation Facilities and other utilities and services (fire, police, education, etc.) to the Property.

2.2 Proposed Development

- a. Description. A description of the components of the private and public improvements anticipated to be constructed and/or acquired by the CFD.
- b. Operating Plan. The Application must clearly detail the specific entities such as the CFD, homeowners associations, the Applicant, the City, or others that will be responsible for funding the on-going operation and maintenance costs for all CFD improvements, including replacement reserves, if appropriate.
- c. Estimated Costs. An estimate of the cost of each component of the planned improvements to be completed by the CFD and projected operating, maintenance, and replacement costs.
- d. Timetable. A timetable describing the scheduling, timing or phasing of the various components of the planned development. Each phase of the development should be shown separately.

2.3 Financing Plan and Feasibility Study

- a. Description. A description of the sources and uses of funds for the public infrastructure and private development, including operating, maintenance, and replacement reserves. This description should include proposed bonds for public infrastructure as well as the sources of the proposed financing for the private development including any debt or equity.
- b. Fiscal Impact. An analysis of the impact on the users/residents within the CFD, specifically, projected property tax rates and levies, special assessments, fees, charges and any other costs to be borne by the CFD. A comparative analysis of such taxes, assessments and fees of similar or adjoining areas and/or CFDs should also be provided.
- c. Market Absorption. A market absorption study for the private development in the CFD prepared by an independent consultant acceptable to the City. Such study shall include estimates of the revenue to be generated by the development and an estimate of the ability of the market to absorb the development as well as a market absorption calendar.

2.4 Applicant Information

- a. General Description. A general description of the Applicant, including the corporate and organizational structure of the entity or individual making the Application to form a CFD. This description shall include the names of all officers and/or corporate directors directly related or associated with the proposed development of the Property and the proposed CFD.
- b. Contact(s). The name, address, phone number and other relevant information of the primary contact for the Applicant. This information shall list the names (and other relevant information) of any legal representatives, engineers, architects, financial consultants and/or other consultants significantly involved with the Application.
- c. Experience. A general description of the Applicant's experience with similar types of projects as the development of the Property.
- d. Financial Capability. Evidence demonstrating the Applicant's ability and capacity (including financial statements if necessary) to undertake the proposed development.

2.5 Miscellaneous Information

- a. Marketing Plan. A detailed description of the proposed marketing plan to be used by the Applicant to market property within the CFD.
- b. Disclosure to Prospective Property Owners. The City requires all of the following *minimum* disclosure requirements, in addition to the disclosure required in the public report (as required by the Arizona Department of Real Estate). Disclosure methods and content that exceed these minimum requirements may be imposed by the City depending on the Project and the plan of marketing associated therewith.

- i. Notice and description of the CFD in all sales contracts.
 - ii. A disclosure form that explains to prospective buyers the potential tax, assessment and other financial burdens of the CFD.
 - iii. Upon each sale of property in the CFD, the Applicant shall file with the City Clerk a receipt signed by the purchaser that acknowledges the purchaser's receipt of the disclosure form.
 - iv. Any seller of property within the CFD to a residential homebuyer is required to describe in promotional materials and display prominently in any sales office the financial and other relative impacts of being in a CFD.
- c. Equity Contribution. A description of the proposed equity contribution from the applicant/landowner and a calendar showing the timing and sources of such equity contribution including evidence of at least \$0.33 in infrastructure or community improvements benefiting the Property for each \$1.00 of debt to be issued by a CFD to finance public infrastructure purposes. If agreed to by the Board, in its sole and absolute discretion, prior infrastructure and community improvements constructed or acquired by the Applicant and benefiting the Property may be included in calculating the Applicant's compliance with this requirement.
- d. Development Agreements. As an appendix, any Development Agreements entered into between the City and the Applicant relating to the proposed development.

ARTICLE 3

Application Procedures

- 3.1 Ten (10) copies of the application for the formation of a CFD shall be submitted to the City Manager's Office.
- 3.2 At the time of submission of the application, the Applicant shall pay a non-refundable application fee of \$150,000, and shall deposit an additional processing fee of \$50,000 as a deposit on account to be applied by the City in its sole discretion to the costs incurred in connection with the processing and review of the application and the formation of the CFD. All or a portion of the non-refundable application fee may be deposited to the city's affordable housing trust fund, as directed by Mayor and City Council. When \$50,000 (and each subsequent amount hereinafter described) is expended, an accounting will be made to the Applicant for all costs incurred by the City and an additional \$50,000 will be requested and must be paid forthwith. Upon formation of the CFD any balance of such deposit will be applied for the purpose described in Section 4.1.
- 3.3 After the application fee and deposit are submitted, the City Finance Department shall arrange a pre-application conference with the appropriate City staff, for the purpose of reviewing the application for conformity with City policies, to identify missing or incomplete information and to identify and discuss any initial concerns prior to the City undertaking a more complete review of the Application.

- 3.4 If, following the pre-application conference or any other time during the application process City staff requests additional information, the Applicant shall provide any and all supplemental information requested prior to proceeding with the review process.
- 3.5 The review, analysis and approval of the application will be generally conducted as follows:
- a. A detailed review of the application, as amended, including, but not limited to, examining the feasibility, financing analyses and evaluation of community benefits relating to the CFD. Under the direction of the City Manager, a report may be prepared including recommendations related to the CFD and any additional requirements that will be placed on the Applicant and/or the CFD.
 - b. If all requirements have been satisfied, including receipt of required payments from the Applicant, the application and any report, and recommendations by the City Manager will be forwarded to the Mayor and Council.
 - c. If the Mayor and Council approves an application for formation of a CFD, the Applicant and the staff of the City shall coordinate a schedule of events for formation of the CFD.
 - d. Simultaneously with the formation of the CFD, the Applicant, the City and the District shall enter into a development agreement which shall incorporate the requirements of any report, recommendations of the City staff relating to such CFD, the requirements of these policy guidelines and any other restrictions, provisions and agreements required by the City.
 - e. The review of the application will include a detailed analysis of the anticipated property tax and/or assessment burden to be placed upon future residents within the boundaries of the CFD. The analysis will include the impact, if any, of the proposed CFD financing on the City's prospective bonding capacity, including a chart detailing the overlapping debt implications of the proposed CFD financing, as well as a summary of any other, existing CFDs located in the City.
- 3.6 If the Mayor and Council approves the formation of a CFD and there are existing agreements with Applicants for the provision of infrastructure proposed to be furnished by the CFD, then those agreements will be deemed amended to reflect the agreements and conditions pertaining to the CFD. The amendments will reflect that such infrastructure improvements will be provided (including by acquisition) by either the Applicant or the CFD.

ARTICLE 4

CFD Operations and Debt Financing

- 4.1 Upon formation of a CFD the Applicant shall deposit with the CFD a nonrefundable administrative expense fee in the amount of \$50,000. The administrative expense fee shall be applied by the CFD, in its sole discretion, to the costs and expenses incurred in connection with the formation, review of any feasibility study, election costs, administration, operation and maintenance of the CFD or its public improvements. From time to time, upon depletion of the administrative expense fee, the CFD may request, and

the Applicant shall promptly deposit with the CFD, additional \$50,000 deposits to be applied to the purposes contemplated herein.

- 4.2 The Board shall enter into an intergovernmental agreement as described in Section 3.5.d. herein for administrative and other necessary services which will be provided to the District by the City.
- 4.3 The Board may require the imposition of an ad valorem property tax upon the CFD taxable property in order to provide for the CFD to be self-supporting for its administrative, operation and maintenance expenses and replacement reserve purposes, if appropriate. Failure to cooperate with the imposition of such tax will relieve the City and the CFD from undertaking any obligations or operations.
- 4.4 The amount of debt of a CFD may not have any substantial direct or indirect negative impacts on the debt or financing capabilities of the City, and the debt imposed on the CFD may not impose an unreasonable financial burden on future CFD residents as determined by the City.
- 4.5 Each bond financing shall require a project feasibility report as required by the Act.
- 4.6 Proceeds of the sale of each bond issue may, to the extent limited by applicable law, be applied to fund a debt service reserve fund in the maximum, permissible amount or an acceptable reserve fund surety bond, insurance policy or other guarantee shall be provided in lieu thereof. If applicable law does not permit the funding of such a reserve fund, the Applicant or third parties shall provide amounts for such purpose under circumstances acceptable to the Board.
- 4.7 If general obligation bonds are to be issued by the CFD, those bonds will be secured by an unlimited ad valorem tax on all taxable property located within the CFD. Prior to issuance of general obligation bonds by the CFD, the Applicant shall include in each project feasibility report, in addition to all statutory requirements, the following:
 - a. The current direct and overlapping tax and assessment burden on the taxable property that is proposed to be taxed and the full cash value and assessed valuation of the taxable property as shown on the most recent assessment roll.
 - b. A current approximation of the fair cash market value of the property within the CFD, which will be taxed or assessed.
 - c. The amount and timing of CFD general obligation bonds to be issued.
 - d. The expected market absorption of development within the CFD.
 - e. The effect of the CFD bond issuance on CFD tax rates, calculated as of the beginning, midway through and at the end of the market absorption period or based on the phasing of the project to be financed, as applicable.
 - f. Any plan for subsidizing CFD tax rates and collections that utilizes a written agreement (the "Subsidy Payment Agreement") from a third party or parties (collectively, the "Obligated Party"), wherein the Obligated Party agrees to pay

all or a portion of the debt service on any general obligation bonds of a CFD that is not paid by tax collections levied and received for such purpose.

- 4.8 An Applicant for revenue bonds shall include in each project feasibility report, the following:
- a. The revenue source from which bonds will be payable. The City reserves the right to require the Applicant to produce such independently prepared feasibility studies or reports as it deems necessary to confirm the amount and availability of revenues.
 - b. The expected market absorption of development within the CFD.
 - c. The amount and timing of CFD revenue bonds to be issued.
 - d. The financial impact of the proposed Issues(s) on prospective residents.
 - e. Any plan for subsidizing revenues to meet obligations with respect to the bonds.
- 4.9 Assessment Bonds shall be secured by first lien (subject only to the lien for general taxes and prior special assessments) on the property benefited. Applicants for assessment bonds shall include in each project feasibility report, the following:
- a. The current direct and overlapping tax and assessment burdens on real property to comprise the district and the full cash value and assessed valuation of that property as shown on the most recent assessment roll.
 - b. A current appraisal of the fair cash market value of the property within the proposed district which will be taxed or assessed. The appraisal shall be prepared by a person who is designated as a Member Appraisal Institute (“MAI”) and a certified general real estate appraiser (such person hereafter referred to as an “MAI Appraiser”), such appraisal to be in form and substance acceptable to the Board, in its sole and absolute discretion.
 - c. The amount and timing of district assessment bonds to be issued.
 - d. The expected market absorption of development within the district.
- 4.10 Notwithstanding the restrictions pertaining to public sales and private placements of the bonds set forth in this Article 4, the restrictions may be modified if other financing structures are presented which, in the sole discretion of CFD District Board, provide other means to address CFD concerns.

ARTICLE 5

Other Considerations

- 5.1 The Applicant (or such other third party acceptable to the City and the CFD), shall indemnify the City and the CFD and their agents and employees and shall hold the City and the CFD and their agents, officers and employees harmless for, from and against any

and all liabilities, claims, costs and expenses, including attorneys' fees, incurred in any challenge or proceeding to the formation, operation, administration of the CFD, the offer and sale of CFD bonds, the levying by the CFD of any tax, assessment or charge and the operation and maintenance of public infrastructure financed or owned by the CFD.

- 5.2 Unless otherwise provided to the City pursuant to other requirements prior to CFD financing and acquisition by the CFD, the CFD and City will require an independent environmental report or assessment of any real property which will be dedicated to or otherwise owned, leased or operated by the City or the CFD and a proposed form or indemnity agreement with respect to all environmental law liability.